

STATE OF VERMONT  
OFFICE OF THE SECRETARY OF STATE  
OFFICE OF PROFESSIONAL REGULATION  
VERMONT BOARD OF NURSING

IN RE: REBECCA I. ODUAH       )  
      Licensed Practical Nurse    )  
      License No. 025.0009412    )     Case File No. 2009-71  
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**Decision on Request to Withdraw License as Licensed Practical Nurse**

Appearances:

for Petitioner, State of Vermont: Edward G. Adrian, Esq.  
for Respondent: Rebecca I. Oduah, *pro se*

Hearing Officer:

George K. Belcher

Exhibits:

- Ex. 1 License Application dated October 24, 2006
- Ex. 2 Verification of Education, transcript and graduation certificate
- Ex. 3 Letter to State Boards of Nursing from CGFNS dated January 29, 2009
- Ex. 4 Letter to Dr. Botter from Director of Evaluations, International Education Research Foundation, Inc. dated May 4, 2010
- Ex. 5 Letter to Dr. Botter from CGFNS dated May 13, 2010
- Ex. 6 Letter to Josef Silny from Audra Flanders, dated November 13, 2008
- Ex. 7 NCLEX-PN Candidate Report dated August 1, 2007

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

This matter was considered on June 25, 2010. Participating in the hearing were Edward Adrian, Esq. on behalf of the State of Vermont. The Respondent, Rebecca Oduah, participated by telephone. The Hearing Officer on behalf of the Vermont Nursing Board was George K. Belcher. Notice of the hearing was given to the Respondent by letter of Mary Botter, PhD, RN dated May 25, 2010. Evidence was taken. Upon the evidence presented, the Board makes the following findings of fact, conclusions of law and order.

## Findings of Fact

1. The Respondent, Rebecca Oduah, was born in Nigeria. She moved to Georgia in 1989, more or less. On June 12, 2006 the Respondent was given a "Degree/Certificate" of a Practical Nursing Program from the Hospicare Nursing Academy of Mandeville, Jamaica. The instruction for this program was not in Jamaica, but rather was in Marietta, Georgia (U.S.) and the clinical instruction was in Ausgal, Georgia, in a nursing home. When she was asked why she chose this school for her LPN instruction, she stated that there was no waiting list to be admitted. She paid approximately \$6,500.00 for tuition and attended classes and instruction for about one year.
2. Following graduation she was advised by the school to apply for a Vermont LPN license. She took the NCLEX-PN examination and failed it four times. She applied to The Vermont Nursing Board to take the examination a fifth time and was granted permission in February of 2008. She took the NCLEX-PN examination for the fifth time and passed it. She was given a Vermont LPN License in 2008. She applied for an LPN License in Georgia but her application was not approved because "Georgia had a problem with the owners of the school." (Testimony of the Respondent.)
3. She applied for a license as an LPN in Tennessee since that state was close to her state of residence and she was granted a Tennessee LPN license in May of 2008.
4. The Respondent has worked as an LPN since 2008. She currently lives in Georgia but works in Tennessee.
5. In January of 2009 the Vermont Nursing Board was given information which called into question the Jamaican certification of the Respondent's school. In a letter from CGFNS International to state nursing boards, the accreditation service noted that "only two Practical Nursing Programs have been accredited by the National Council on Technical and Vocational Education and Training" but that the Hospicare Nursing Academy was not one of them. (State Ex. 4) In May of 2010, the Vermont Nursing Board received additional verification that the Hospicare Nursing Academy was not recognized or accredited in Jamaica. (State Exs. 5 and 6)
6. There was no evidence offered to show that the Respondent knew that the nursing program she attended in Georgia was deficient or unaccredited. She testified that she thought the nursing program was "O.K."
7. The Respondent has never worked as a nurse in the State of Vermont. She would like to retain her Vermont LPN license.
8. The original educational program completed by the Respondent did not meet the Vermont educational requirements. The educational institution at which she received her basic LPN training is from an institution which does not train Licensed Practical

Nurses for licensing in Jamaica because practical nurses are not licensed in Jamaica. (State Ex. 3) Thus, the license which was granted to the Respondent was mistakenly issued to her based upon the belief by the Vermont Nursing Board that she satisfied the Vermont educational requirements. "An applicant for licensure to practice as a practical nurse shall be a graduate of an approved educational program preparing persons for entry into practice of practical nursing." Administrative Rules of the Board of Nursing, Chapter 4, Subchapter 2, Rule II (C.) When it became apparent that the license had been issued though a mistake, the Vermont Board of Nursing took action to withdraw her license.

### Conclusions of Law

1. The Vermont Board of Nursing has authority to issue licenses to registered nurses, licensed practical nurses and licensed nursing assistants. It also has the authority to issue warnings, reprimands, suspensions, revocations, limitations, or conditions concerning current licensees; or prevent the renewal of lapsed licenses if, after disciplinary hearing, the Board finds unprofessional conduct. 3 VSA Sec. 129 (a); 3 VSA Sec. 129a; 3 VSA Sec. 814 (d); 26 VSA Sec. 1582; the Administrative Rules of the Board of Nursing; and the Rules of the Office of Professional Regulation.
2. The Vermont Nursing Board has the authority to appoint a hearing officer to hear particular cases, report findings and conclusions to the Board, and to recommend to the Board action to be taken concerning a particular license or licensee. (3 VSA Sec. 129(f))
3. The purpose of the Vermont licensing program for licensed practical nurses is to "safeguard the life and health of the people of this state." 26 VSA Sec. 1571. The purpose of the Administrative Rules of the Nursing Board governing the licensing of nurses is "to safeguard the life and health of the people of Vermont by empowering the Board to ... register and license qualified applicants from other states." (See Administrative Rules of Vermont Nursing Board, Chapter 1, Rule II(D)) It is the public interest and the police power of the state which stands as the authority for the legislature to authorize administrative licensure of Licensed Practical Nurses. "In the absence of constitutional limitations, the ultimate authority from which a license to carry on a particular activity derives, has inherent power to withdraw the license." 51 Am Jur 2d Licenses, Sec. 88, Page 92, (citations omitted).
4. There is no constitutional limitation upon the withdrawal of a license where the license was issued through mistake, unless a fundamental interest is at stake. The balance between the interest of the Respondent in keeping her license on the one hand, and the interests of the public in having adequately trained nurses on the other hand, only requires a rational basis as justification to withdraw the license. Gersch v. Illinois Department of Professional Regulation, 720 N.E. 2d 672 (1999). In that case, a social worker was granted a high level license in error. The court held that the State "has the authority to rescind or cancel a license which has been improperly or erroneously issued when the statutorily mandated educational requirements have not

been satisfied." Id. In short, the loss to the licensee was justified by the overriding public interest in having educated professionals deliver safe professional services.

5. It is also recognized that even though the licensing scheme may call for suspension or revocation of a license for specific unprofessional acts, it is within the implied authority of a licensing agency to cancel a license which was mistakenly issued. Id. See also State v. City of Milwaukee, 207 Wis. 199, 240 N.W. 847, 79 ALR 281 (1932) where a mayor revoked a license given for a "marathon dance" which he had mistakenly issued, despite the fact that preparations for the dance had been made.
6. In the case now before the Vermont Board of Nursing, there is ample authority to withdraw the license of Rebecca Oduah.

### **ORDER**

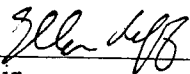
The Licensed Practical Nursing license of Rebecca Oduah referenced above is deemed withdrawn and is no longer valid.

Dated this 2 day of August, 2010.



George K. Belcher  
Hearing Officer

Considered by the Vermont Board of Nursing and Approved  
SO ORDERED August 9, 2010



Ellen Leff, Chair  
Vermont Board of Nursing

8-25-10 Date entered

### **Appeal Rights**

This is a final administrative determination by the Vermont Board of Nursing. A party aggrieved by a final decision of a Board may appeal the decision by filing a written Notice of Appeal with the Director of the Office of Professional Regulation, Secretary of State's Office, National Life Building, Fl. 2, 1 National Life Drive, Montpelier, Vermont 05620-3402 within 30 days of the entry of the order. For more information about the procedure for filing an appeal, please see the Administrative Rules for the Office of Professional Regulation, which you can

find at [http:// www.vtprofessionals.org/opr1/opr/admnrule.pdf](http://www.vtprofessionals.org/opr1/opr/admnrule.pdf) The Rules are also available at the Office of Professional Regulation.